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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 MARTINA DURAN DURAN,

12 Plaintiff,

13 v.

14 FCA US LLC, a Delaware Limited
15 Liability Company, and TURLOCK
CHRYSLER DODGE JEEP RAM,

16 Defendants.
17

No. 1:19-cv-01763-DAD-EPG

ORDER REMANDING ACTION FOR LACK
OF SUBJECT MATTER JURISDICTION

18 On December 27, 2019, the court issued an order to show cause requiring defendants to
19 provide additional information to allow the court to determine whether it has subject matter
20 jurisdiction over this action. (Doc. No. 10.) Defendant FCA US LLC (“FCA”) responded to the
21 order to show cause on January 10, 2020. Plaintiff Martina Duran Duran filed an opposition on
22 January 24, 2020, (Doc. No. 12), and defendant FCA replied on January 31, 2020. (Doc. No. 14.)
23 For the reasons set forth below, the court concludes that defendants have failed to establish this
24 court’s subject matter jurisdiction and the court will therefore remand this case back to state
25 court.

26 Defendants removed this action to this federal court alleging diversity of citizenship.
27 (Doc. No. 1 at 1.) Under 28 U.S.C. § 1332, federal courts have jurisdiction on the basis of
28 diversity of citizenship if the matter is between citizens of different states and the amount in

1 controversy exceeds \$75,000. In its order to show cause, the court specifically noted that
2 defendant FCA must show by clear and convincing evidence that defendant Turlock Chrysler
3 Dodge Jeep Ram (“Turlock Chrysler”) was fraudulently joined to this action by plaintiff in order
4 to defeat diversity jurisdiction. (Doc. No. 10 at 1, 3); *see also Hamilton Materials, Inc. v. Dow*
5 *Chem. Corp.*, 494 F.3d 1203, 1206 (9th Cir.2007) (“Fraudulent joinder must be proven by clear
6 and convincing evidence.”). The court went on to specifically direct defendant FCA to show that
7 individual dealerships *cannot* be properly named as defendants in actions brought under
8 California’s Song-Beverly Consumer Warranty Act. (Doc. No. 10 at 2–3.)

9 Defendant FCA has yet to satisfy its burden of proof. Rather, defendant FCA primarily
10 challenges the sufficiency of plaintiff’s allegations.¹ (*See generally* Doc. Nos. 11, 14.) The Ninth
11 Circuit has acknowledged that the analysis under Rule 12(b)(6) shares some similarities with the
12 fraudulent joinder standard, and that “the complaint will be the most helpful guide in determining
13 whether a defendant has been fraudulently joined.” *Grancare, LLC v. Thrower by and through*
14 *Mills*, 889 F.3d 543, 549 (9th Cir. 2018). The two tests should not, however, be conflated. *Id.*

15 If a plaintiff’s complaint can withstand a Rule 12(b)(6) motion with
16 respect to a particular defendant, it necessarily follows that the
17 defendant has not been fraudulently joined. But the reverse is not
18 true. If a defendant cannot withstand a Rule 12(b)(6) motion, the
19 fraudulent inquiry does not end there. For example, the district court
20 must consider, as it did in this case, whether a deficiency in the
21 complaint can possibly be cured by granting the plaintiff leave to
22 amend.

23 ¹ Defendant FCA correctly notes that the Ninth Circuit allows the district court to “pierce the
24 pleadings” and “consider[] summary judgment-type evidence such as affidavits and deposition
25 testimony.” (Doc. No. 14 at 8) (citing *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1068 (9th
26 Cir. 2001) (internal citations omitted). However, while defendant FCA argues that plaintiff’s lack
27 of evidence “speaks volumes,” (*id.*), plaintiff’s failure to present evidence does not satisfy
28 defendant’s burden. The only evidence presented by defendant in opposition to remand is a
declaration from defense counsel Spencer P. Hugret. (Doc. No. 1-3.) Therein, defense counsel
attests that in his experience of representing defendant FCA in over 1,000 lawsuits of this nature,
“individual dealerships have not been sued as a matter of course” and “[i]t is [his] belief that the
instant Plaintiff only sued the named TCDJR dealership in Stanislaus County, in an attempt to
defeat diversity and to prevent the matter from being removed to federal court.” (*Id.* at ¶¶ 4, 7.)
As the court noted in its order to show cause, however, defense counsel’s subjective belief is
insufficient to demonstrate that defendant Turlock Chrysler cannot be properly named in this
action. (Doc. No. 10 at 3.)

1 *Id.* at 550.

2 Here, defendant FCA avers that plaintiff's complaint demonstrates that she has no
3 intention of prosecuting her claims against defendant Turlock Chrysler because her express
4 warranty and implied warranty claims fail. (Doc. No. 14 at 3.) Turning to the breach of express
5 warranty claim, defendant notes that

6 [p]laintiff does not allege what problems she experienced with the
7 engine, suspension, and electrical systems. Instead, Plaintiff relies
8 on a vague reference to "various" purported "defects" relating to
9 three distinct vehicle components. Plaintiff also fails to allege the
terms of the express warranty, or how many repair attempts were
made for the alleged nonconformity (or when the repairs were made),
and what happened each time she took the vehicle in for repairs.

10 (Doc. No. 11 at 5.) While these specific deficiencies could result in plaintiff's complaint being
11 dismissed under Rule 12(b)(6), it is possible that each noted deficiency could be cured by
12 amendment. *See Hall v. Kraft Heinz Food Co. (LLC)*, No. 1:19-cv-00565-LJO-BAM, 2019 WL
13 2598764, at *3 (E.D. Cal. June 25, 2019) ("Even where presently deficiently pled, where
14 Plaintiffs may amend that claim to cure any arguable defects, it may not be said that it is
15 impossible for them to state a claim against [a non-diverse defendant]."); *Mireles v. Wells Fargo*
16 *Bank, N.A.*, 845 F. Supp. 2d 1034, 1063 (C.D. Cal. 2012) ("Defendants must show that the
17 relevant state law is so well settled that plaintiff 'would not be afforded leave to amend his
18 complaint to cure th[e] purported deficiency.'")

19 Defendant FCA also argues that, as a matter of law, plaintiff's complaints and demands
20 for repurchase or replacement should be directed solely to the manufacturer and not defendant
21 Turlock Chrysler, the retailer. (Doc. No. 11 at 5.) Although defendant FCA does not specify that
22 this argument pertains solely to plaintiff's breach of express warranty claim, defendant notes in its
23 reply that a buyer is allowed the "right of replacement or restitution for breach of an express
24 warranty," and the right does not apply to breach of implied warranty. (Doc. No. 14 at 6) (citing
25 *Victorino v. FCA US LLC*, 326 F.R.D. 282, 302 (S.D. Cal. 2018), *appeal withdrawn*, No. 18-
26 80076, 2019 WL 7187392 (9th Cir. Nov. 21, 2019)). The court therefore assumes that defendant
27 FCA's argument is that plaintiff's breach of express warranty claim can only be brought against
28 the manufacturer. Assuming *arguendo* that this argument is true, this still does not foreclose the

1 possibility of plaintiff bringing her breach of implied warranty claim against the retailer under the
2 circumstances of this case.

3 Defendant FCA's sole argument in support of its contention that plaintiff's implied
4 warranty claim fails as a matter of law is that plaintiff has not alleged that she is entitled to
5 damages for diminution of value, which is plaintiff's available remedy under California Civil
6 Code § 1794(b)(2). (Doc. No. 14 at 7.) However, assuming that plaintiff's only available remedy
7 for a breach of implied warranty claim is diminution of value, plaintiff does in fact pray for such
8 relief in her complaint. (See Doc. No. 1, Ex. A at 10.)

9 As noted in the order to show cause, the undersigned does not interpret the law in this area
10 as foreclosing the bringing of an action against both the manufacturer and the retailer. (Doc. No.
11 10 at 3.); *see also Tanner v. Ford Motor Co.*, No. 5:19-cv-02495-EJD, 2019 WL 6269307, at *4
12 (N.D. Cal. Nov. 25, 2019) (concluding that it was "not obvious that Plaintiffs [could not] state a
13 claim [under Song-Beverly] against [an individual dealership], because it [was] possible their
14 implied warranty claim [was] not time-barred"). Defendant has failed to show, and the court
15 remains unconvinced, that "there is *no possibility* that the plaintiff could prevail on any cause of
16 action it brought against the non-diverse defendant." *Hall*, 2019 WL 2598764 at *3 (emphasis
17 added).

18 Accordingly, the court hereby remands this action to the Madera County Superior Court
19 for lack of subject matter jurisdiction. The Clerk of the Court is directed to close this case.

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21 IT IS SO ORDERED.

22 Dated: **April 9, 2020**

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25 UNITED STATES DISTRICT JUDGE
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